



U.S. Department of Justice

United States Attorney
Southern District of New York**MEMO ENDORSED****BY ECF AND EMAIL**

Honorable Valerie E. Caproni
 United States District Court Judge
 Southern District of New York
 Thurgood Marshall United States Courthouse
 40 Foley Square,
 New York, New York 10007

United States District Courthouse
 300 Quarropas Street
 White Plains, New York 10601

February 2, 2023

USDC SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #: _____
 DATE FILED: 2/2/2023

Re: *United States v. Edwin Cortorreal*, 17 Cr. 438 (VEC)

Dear Judge Caproni:

The Government writes¹ to respectfully request that the Court stay the additional post-hearing briefing originally requested by the Government following the conclusion of Dr. Dan Krane's testimony on January 19, 2023.² As set forth in more detail below, the Government has decided to proceed with testing the remainder of swab 1B of the duct tape roll (the "Sample"), using a different amplification kit and a different probabilistic genotyping software. Because the results of this additional analysis may impact whether the Government will seek to admit the 2020 DNA analysis on the Sample, the Government is seeking a stay of the briefing.

Following the conclusion of the reopened *Daubert* hearing on January 19, 2023, on January 23, 2023, the Government requested the Office of the Chief Medical Examiner ("OCME") to locate and quantify the DNA remaining from the Sample after it was initially tested. On January 30, 2023, OCME confirmed that a sufficient amount of DNA remained, such that OCME could use the Promega PowerPlex Fusion Amplification kit, which is different from the AmpFLSTR Identifiler kit used previously, and STRMix, which is a different probabilistic genotyping software than the FST system that was previously used. On January 31, 2023, the Government requested OCME to test the remaining Sample on an expedited basis. OCME anticipates that it will have results within 15 business days.

¹ The Government submitted a substantially similar letter on February 1, 2023, docketed at 766. Subsequent to filing the letter, the Government noticed an error in the first sentence of the second paragraph. This letter corrects that error, and the Government requests that the letter docketed at 766 be stricken.

² Government counsel reached out to defense counsel for their position on the Government's request in the evening on January 31, 2023. On February 1, 2023, defense counsel advised that they oppose the Government's request and will be submitting their own letter.

The results of the testing may impact whether the Government will seek to admit the 2020 test results on the Sample, which was the subject of the reopened *Daubert* hearing and the anticipated subject of the briefing. Accordingly, the Government is seeking a stay of the briefing schedule *sine die* until the Government receives the results from the new DNA analysis, at which point the Government will promptly submit a status letter to the Court regarding how it wishes to proceed.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

by: _____ /s/
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Application GRANTED. The *Daubert* briefing schedule is hereby STAYED *sine die*. The Court will hold a status conference on **Tuesday, February 28, 2023 at 2:30 p.m.** in Courtroom 443 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York, 10007. The Government must produce to the Court and the Defendant the results of the new test as soon as they are obtained.

The Clerk of Court is respectfully directed to strike the document filed at docket entry 766, and to close the open motion at docket entry 768.

SO ORDERED.



Date: 2/2/2023

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE